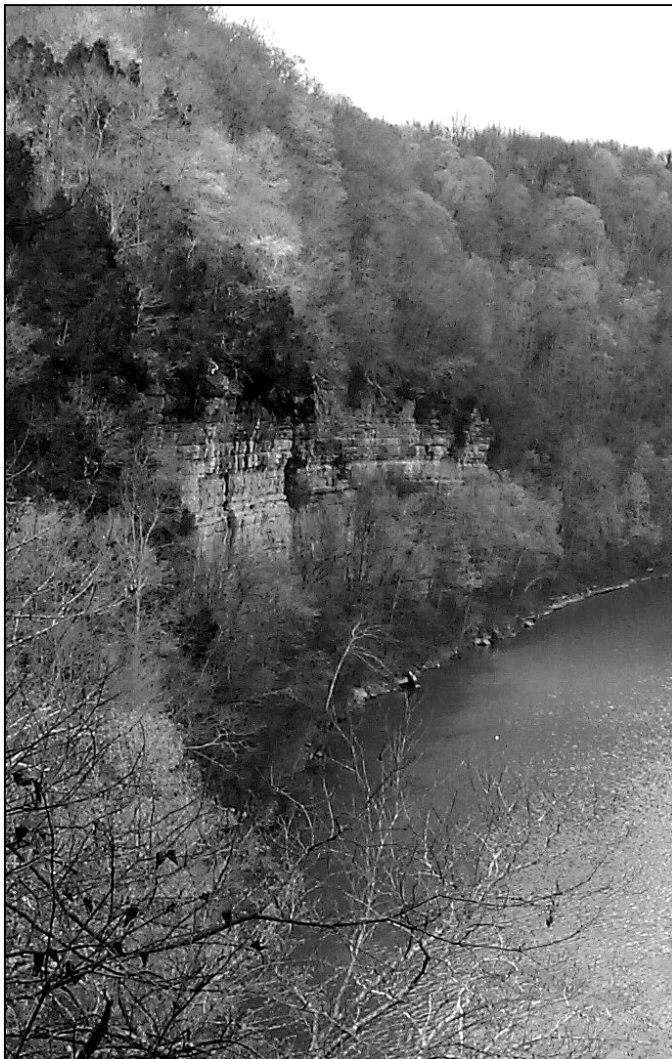


V. RURAL PLAN IMPLEMENTATION PROGRAMS

OVERVIEW

The implementation of the Rural Service Area Land Management Plan will necessitate the development of a range of implementation programs that are as broad in scope as the plan itself. To implement this Rural Service Area Land Management Plan, existing tools and techniques will continue to be used. These include the use of the zoning ordinance and subdivision regulations, establishment of appropriate timing of public facilities, use of downzoning and other rezonings where appropriate, imposition of screening, buffering, or conditional zoning restrictions, and similar methods.



In addition, new techniques will be required to fully realize the objectives of the Plan. Zoning and Subdivision controls alone cannot bring the kind of permanence, fairness, equity, and stability needed to preserve and enhance the Rural Service Area. The plan proposes that PDR and TDR programs be established to achieve those ends.

This section of report sets forth a broad range of programs that are recommended for implementation. They are crafted to meet the specific needs that have been identified to protect our rural Bluegrass community.

*Overlook of Kentucky River and Palisades
from Raven Run Nature Sanctuary.*

A. PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

Elements of a PDR Program

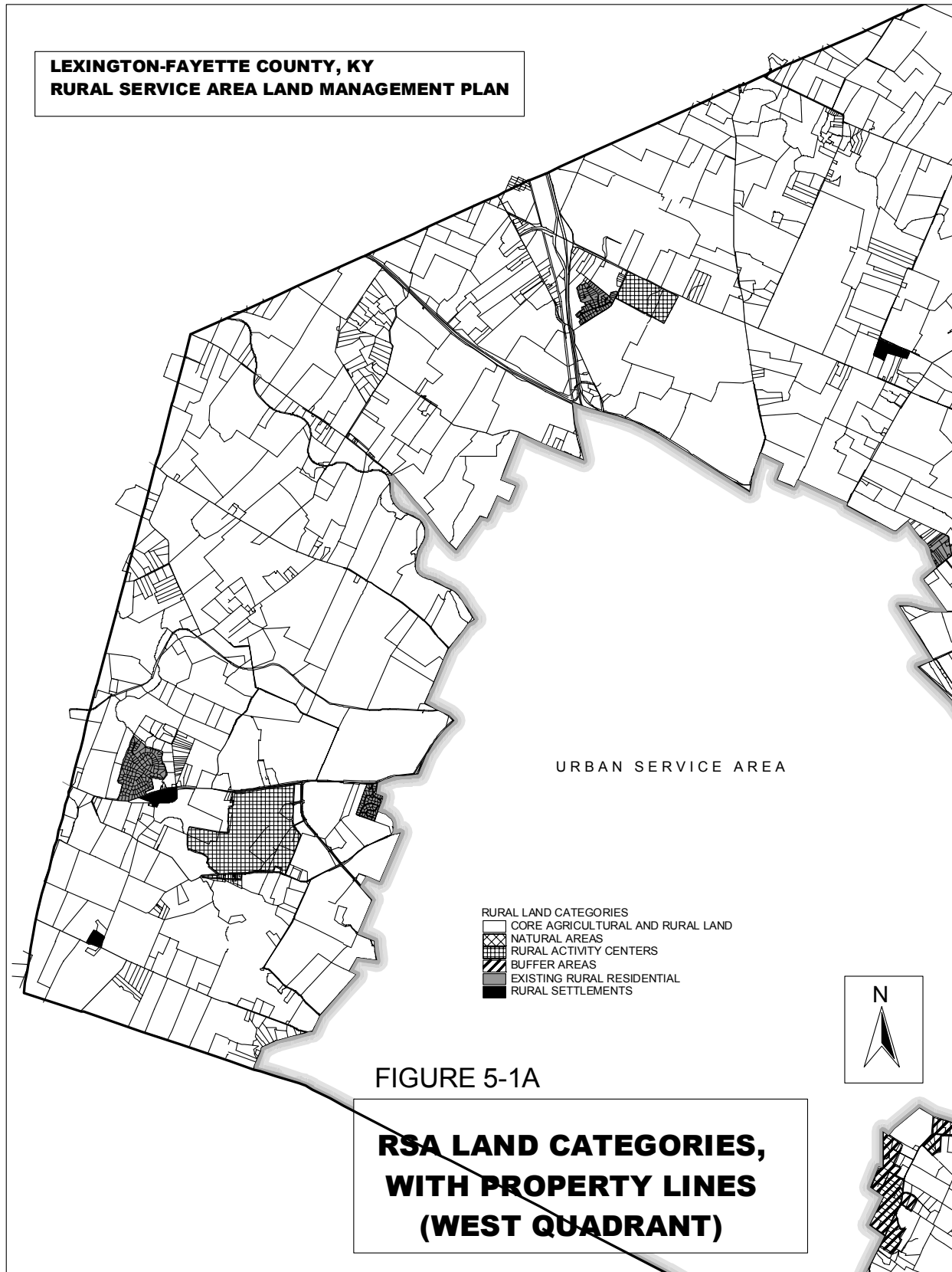
The recommended cornerstone of the implementation of the Rural Plan is a comprehensive Purchase of Development Rights (PDR) Program. The PDR Program would be designed to offer financial incentives in exchange for removal of future development rights from rural land.

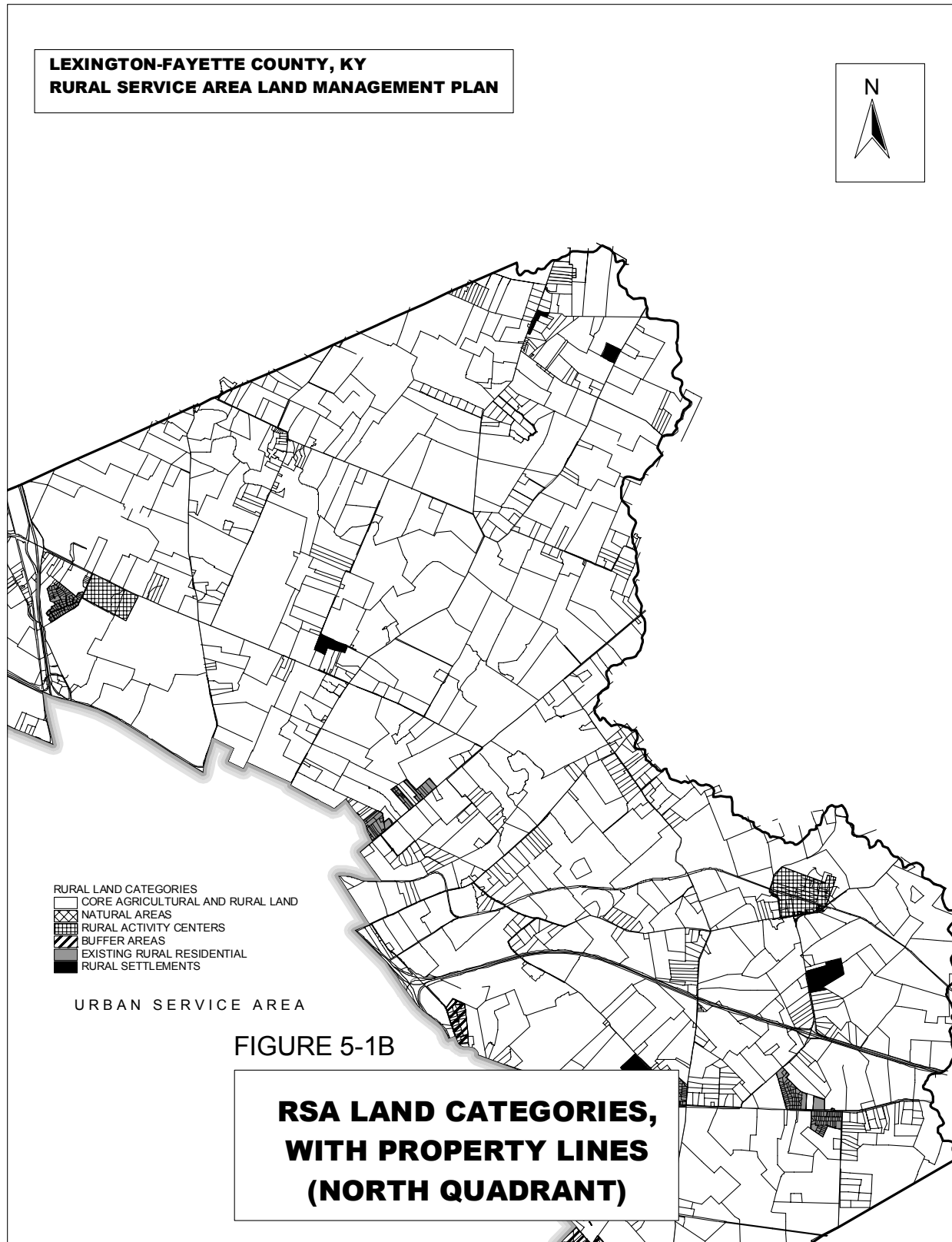
The total overall target for a 20-30 year PDR Program should be at least \$100 million dollars. This is based upon a goal to preserve approximately 50% of eligible lands (40,000-50,000 acres) through the PDR program. This would necessitate compensation for 4,000 to 5,000 development rights. The value of development rights will vary depending on the location of the property and other factors. Since no development rights have been purchased, no value has been established. However, a “best guess” for the cost of a development right is \$ 20,000 to \$ 30,000 (based upon \$2,000-\$3,000 per acre). The total number of development rights that could be mitigated under the Rural Service Area Land Management Plan is a moving target, which is affected by many factors:

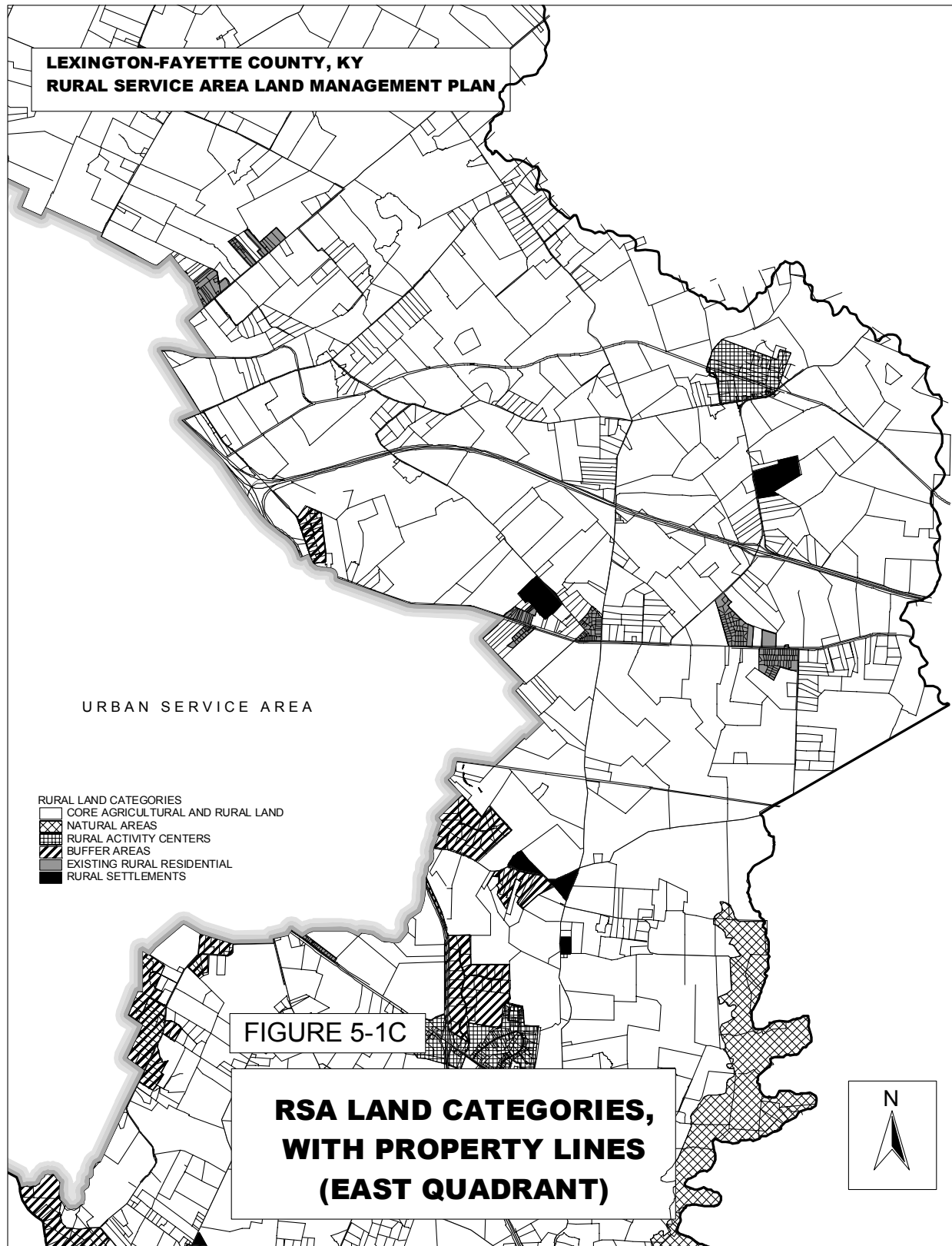
- Current number and size of parcels;
- Policy decisions as to higher minimum lots sizes (for example, 40 acres vs. other larger or smaller minimum lot sizes);
- Geographic locations of new restrictions; and,
- Number of acres upon which the 40-acre restriction is imposed,
- Ownership of parcels (for example, government –owned parcels will not generate development rights to be purchased),
- Value of agricultural land, particularly farms with a high improvement value.

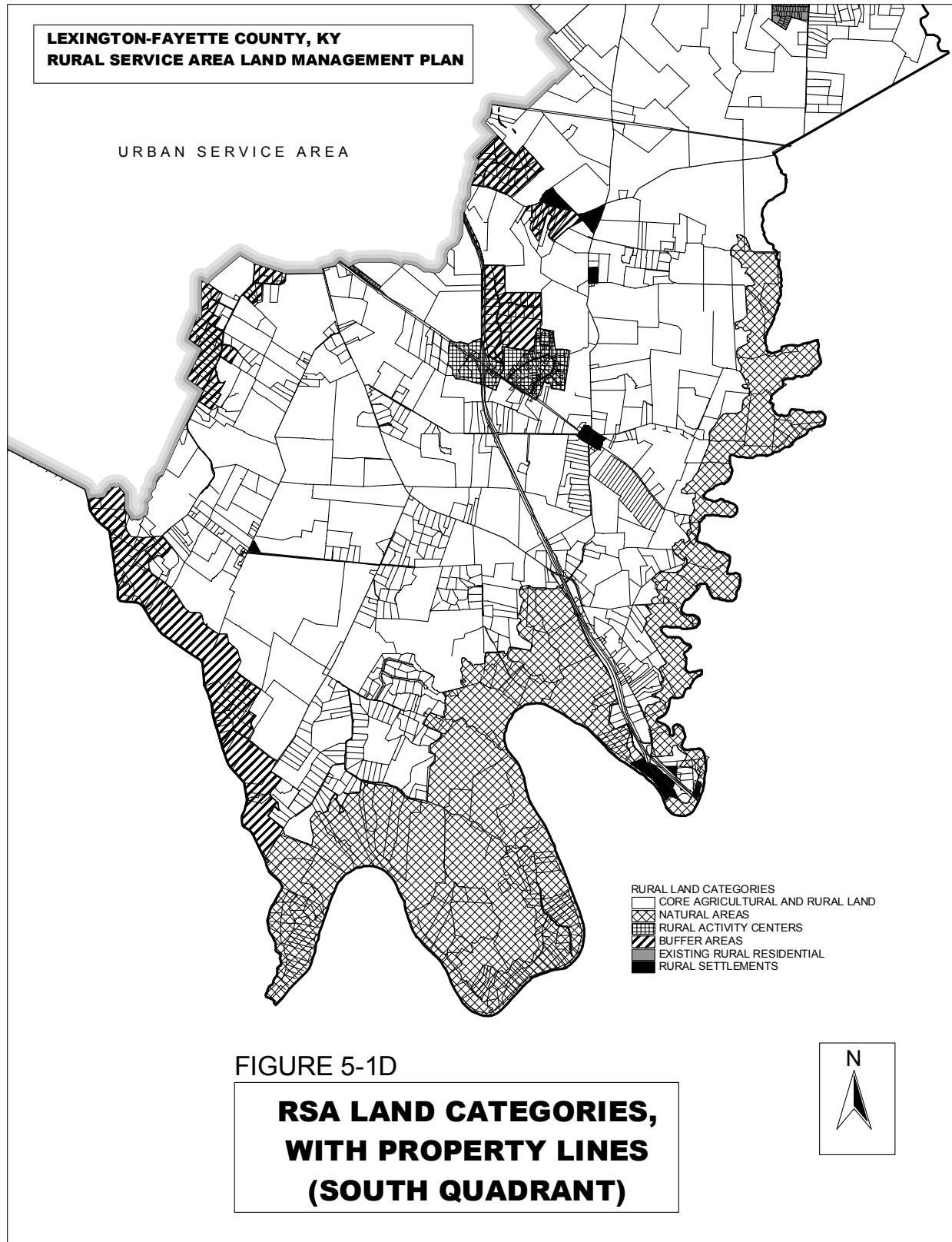
Under the proposed plan, the total acreage in the primary agricultural preservation land categories of CARL and NAT is 122,503 acres. Based upon previous analyses, it is estimated that 20-25% of the land is either in public ownership or already in parcels less than 20 acres in size. Figure 5-1 (A through D) shows the relationship of parcels and the proposed land categories. Therefore, it is assumed that the total number of development rights that could be pursued under the PDR program would be approximately 9,000. As previously noted, the goal would be to acquire 50% of such rights.

The experiences of communities that have established PDR programs indicate that not all lands desired to be preserved will need to have their development rights purchased. In fact, many landowners decide to accept the large lot restrictions and continue agricultural operations without selling development rights. Also, some farms with high improvement to land value ratios will actually have greater value as *farms* than as 10-acre lot developments.









The PDR program should contain the following elements:

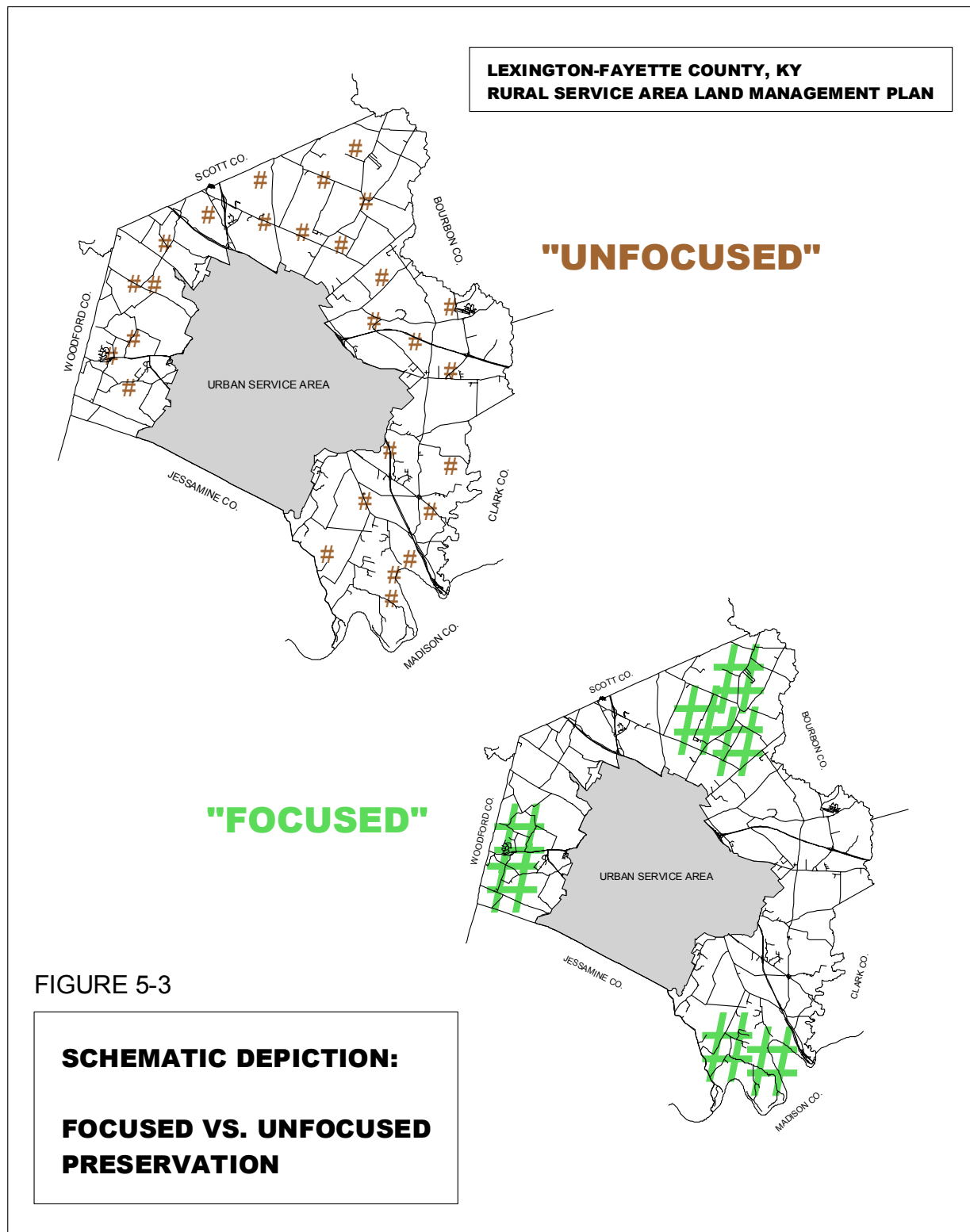
1. **Establishment of Base Development Rights** – All properties which are changed from a current 10 acre minimum to a higher minimum size will retain development rights at their current level. In other words, the development right is the same as the number of lots that could be created on the property under the 10 –acre restrictions in the A-R zone. As is the case under the current laws, CREDIT SHOULD NOT BE GIVEN FOR “fractions” of development rights, since currently any tract of less than twenty acres can only be one tract and not further subdivided. The following table gives examples of the calculations:

FIGURE 5-2: Sample Development Right Table

ACRES IN PARCEL	BASE DEVELOPMENT RIGHT
19.99	1
20.00	2
78.00	7
322.00	32
799.00	79

Any existing parcel less than 20 acres in size would retain one base development right. Lots of less than 20 acres would not be eligible to participate in a Purchase of Development Rights program. The PDR program would retire development rights by compensating land owners for the value difference between the development of the property as 10 acre tracts and the new, higher minimum parcel size (proposed to be 40 acres for most of the RSA).

2. **The PDR program should be voluntary.** Therefore, one initial review criteria for priority acquisition will be the farms that request to participate in the purchase program.
3. **The PDR program should be designed to preserve a “critical mass of land” for agricultural uses.** The program should attempt to concentrate land preservation in a manner that would maximize its benefit to the agricultural industry of Fayette County. Figure 5-3 demonstrates this principle. The unfocused, “paint-splatter” preservation depiction saves open space, but does not as effectively preserve land in a manner which is most conducive to the long-term goal of a strong base of land for agricultural activities. This is not to imply that “natural areas” should not be an acquisition priority. The preservation program should also attempt to prioritize acquisitions of such natural areas in locations that can best preserve environmental quality, protect habitat for flora and fauna, and be part of a network of preserved land which can serve multiple purposes.
2. **The PDR program should be incrementally implemented over a long period of time.** All funds needed to maintain a PDR program would not appear at one time. Funds will accrue on an annual basis based upon the funding sources of the program. Therefore, at any given time, there will be a limited amount of funds available to spend for development right acquisition. The spending priorities will need to recognize numerous factors in consideration of final decision-making.



5. The PDR program must be administered equitably. A Land Evaluation and Site Assessment (LESA) procedure should be established which would create an objective, point-based system for the determination of priority acquisition. It will be necessary for the program to create a fair procedure for assessing sites for preservation. All PDR programs contain a Land Evaluation and Site Assessment of some type that reflects the underlying policies of the program in that jurisdiction. The LESA system should rely to the greatest extent possible on objective factors and criteria so that point ratings cannot appear to be “loaded” by any rater. The voluntary establishment of “agricultural district” designations by associations of farm owners is also used in many jurisdictions as a priority setting criteria. The following list is intended to illustrate some of the major of criteria and factors that should be incorporated in the LESA program, and whether that element should be considered as a positive factor or a negative factor (-) in a point ranking system:

Positive Correlation Factors:

Agriculture Related:

- Size of farm (+)
- Length of public road frontage and visibility (+)
- Proximity to another property with PDR or conservation easement, or “batch” application (+)
- Quality of soils for agriculture (+)
- Farm product sales (+)
- Scale of agricultural improvements (+)
- Percentage of property in cropland or pasture (+)
- Land stewardship (SCS conservation practices) (+)

Environmental Considerations:

- % of environmentally sensitive land, especially riparian areas, tree areas, etc. (+)
- designated rural greenway and/or focus area (+)
- Special natural protection area (+)
- Proximity to and ability to be linked to areas of high environmental value such as parks, nature preserves and sanctuaries (+)

Other:

- Consolidation/elimination of undeveloped 10 acre tracts

Negative Correlation Factors:

- The converse of positive factors above (-)
- Location in a rural land category other than CARL or NAT (-)
- Proximity/Adjacency to the existing Urban Service Area Boundary; except for rare cases of overwhelming importance as a community icon, or in designated focus areas (-)
- Proximity to existing or planned urban services (-)

A properly managed PDR program at the scale envisioned will need its own special administrative structure. The scope of the program will likely require its own staff to administer the program and coordinate its activities with government agencies. There will need to be a body to oversee the administration of the program. There are many different ways to approach these administrative needs, ranging from an entirely new appointed body and staff structure (Example: Library Board), utilizing existing bodies (like the Greenspace Commission and Planning Commission), and/or direct LFUCG Mayor and Council administration LFUCG Administration/Council. However, if a fully realized PDR program is created, it would appear necessary to create a new administrative structure merely to handle the *volume* of work that would need to be done.

This plan recognizes that the creation of the administrative structure will be the prerogative of the Mayor and Urban County Council. The best approach cannot be conclusively determined until it is known what program (if any) is established by referendum or other means. However, it is essential that the program be administered fairly, equitably, in keeping with the principals contained in this plan, and with balance and lack of bias on growth-related issues. Only a program meeting these overarching principles will properly represent the public trust and confidence in the program.

6. **The Purchase of Development Rights Program should promote long-term preservation of the five Focus Areas identified in the Greenspace Plan.** These five areas are:

- North Elkhorn Creek Area
- Boone Creek Area
- Kentucky River palisades
- South Elkhorn Creek Area
- Old Frankfort Pike Area

These are significant rural resources that have been identified as needing additional study.

7. **The PDR Program needs regularized funding to be effective. The following is a listing of sources that could be a part of such funding. Regularized funding also has the potential to be used to retire debt from long-term bonding, which can increase the availability of funds at any given time:**

- a. LFUCG General Funds
- b. Dedicated property tax (referendum required under HB 644)
- c. Dedicated payroll tax (referendum required under HB 644)
- d. Dedicated room tax (referendum required under HB 644)
- e. PACE Program
- f. Surplus state fund revenues
- g. Gifts such as cash, land, preservation easements or donations of services (legal, etc.)
- h. Tax abatement programs targeted to agriculture

- i. Grass-roots fundraising efforts
- j. Open space mitigation funds from the Expansion Areas
- k. Other funds that may become available such as Tobacco Settlement Funds

PDR LEGISLATION

House Bill 644, which was passed in the 1998 legislative session, authorizes additional funding for a Purchase of Development Rights Program. The Urban County Government is authorized to place before the public a referendum whether to fund a purchase of development rights program by means of one or more of the following special tax levies:

- a. An ad valorem tax not to exceed five cents (\$0.05) per one hundred dollars (\$100) of assessed value upon all taxable property. This is the same tax level that the Urban County Government funds the Lexington Public Library. This rate increase would generate \$6.8 to \$6.9 million in additional funds per year.
- b. A license fee not to exceed one-eighth of one percent (0.125%) on franchises, trades, occupations and professions. This is often referred to as an occupational tax. The current tax level is 2.25% with 0.5% dedicated to the Fayette County Public Schools. An increase of 0.125% would yield \$5 to \$6 million per year.
- c. A transient room tax not to exceed one percent (1%) of rents. The current room tax is 5.0%. This increase would yield approximately \$900,000.

These taxes are in addition to other taxes that the Urban County Government may levy.

Upon passage of the referendum the Urban County Government has 180 days to establish a purchase of development rights program which shall include the following:

- a. A statement of the purpose of the program;
- b. A map showing the properties from which development rights are to be purchased;
- c. The restrictions upon the use and development of the properties from which the development rights have been purchased and the duration of the restrictions;
- d. The mechanism, if any, for removing the restrictions;
- e. The procedure for the valuation and transfer of the development rights;
- f. The entity authorized by the Urban County Government to operate the program;
- g. Any other provisions necessary or appropriate.

State Statute allows only limited mechanisms for funding a PDR Program. These are additional property taxes, an additional room tax, and an additional occupational tax. A real estate transfer tax, which is used to fund PDR programs in other states, is not authorized in Kentucky. Donation or dedication of development rights could be used as a federal income tax deduction and could also reduce the value of the donor's estate at the time estate taxes are due. Long term bonds could be funded through general fund revenue.

B. ZONING ORDINANCE AND SUBDIVISION REGULATION TEXT AMENDMENTS

The other significant component of implementing the goals of this plan is the regulatory component. Amendments to existing zoning and subdivision rules will provide the key determinations of base development rights and the visual character and use of the RSA.

New or revised provisions to these ordinances should be created to:

1. Amend the current agricultural-rural zone (A-R) to achieve the intent of the Plan by establishing a minimum lot size of 40 acres.
2. Create new zoning categories to correspond to the Natural Areas, Historic Rural Settlements, and Buffer Areas land use categories of the Plan.
3. Establish how development rights from the rural area might be transferred to specific zones in the urban area. (see Section “D” below)
4. Require protection of unique aspects of the rural landscape, which might include stone fences, wooden fences, trees, special botanical areas, scenic vistas, farm roads and lanes.
5. Establish special standards for streets, storm water, and sewage disposal to address potential problems with the limited development that will be permitted in the Rural Service Area.
6. Establish standards for uses for the environmentally sensitive Royal Spring Aquifer.



Overview of Calumet Farm and surroundings.

C. ZONING MAP CHANGES

The initial implementation of the Plan from a Zoning Map perspective will involve only a few, focused map amendments. These would include:

- **Unused and Improperly Located Business Sites in the RSA**

This comprehensive rezoning program would attempt to address situations regarding the non-agricultural and non-residential zoning scattered throughout the RSA. These are described in detail in Section IV-F of this plan.

- **“Rural Buffer Area” Category**

There are two options available to the LFUCG for the implementation of this category. The LFUCG could initiate a zone change to place this category on appropriate lands after there has been a text amendment creating the zoning category. An alternative approach would be to leave the land in its existing A-R zoning category, and allow landowners to file for a zone change to the new Rural Buffer Area category if they so desire. This second approach is recommended. It would allow a more detailed review of the special circumstances surrounding any particular site, and allow the imposition of conditional zoning or other buffering restrictions to ensure compatibility with nearby agricultural operations.

- **Historic Rural Settlements**

It is recommended that a program be established to implement a series of government initiated zone changes for the rural settlements. This should only be done after a thorough study of these settlements has been conducted and appropriate measures have been adopted to adequately protect and enhance the character of those rural settlements.

D. ON-SITE AND TRANSFER OF DEVELOPMENT RIGHTS PROGRAMS

The process leading to the adoption of this Plan revealed that the community did not favor implementation of a large-scale transfer of development rights (TDR) program. However, there are many programs that could be implemented which would support a PDR program and preserve additional agricultural land.

Further detailed information regarding these concepts is contained in the Rural Service Area Land Management Plan Report #2: A Framework for Plan Development and Adoption. The following is a listing of the recommended programs, a brief explanation of each, and the actions needed to implement the program:

1. Limited On-Site RSA Accessory Dwellings

Programs in this category would include allowance of certain limited residential uses, including tenant houses, that are strictly associated with agriculture. Such units would be permitted in exchange for retirement of development rights associated with the property. Before such programs could be initiated, a zoning ordinance text amendment to create the permitted development to occur and the administrative processes to retire the associated development rights would be needed.

2. Historic Rural Settlement Density Increases

Transfer of development rights could be used to allow increased density in the rural settlements but not to allow the density to exceed the typical lot size of the settlement. Further study of this concept is recommended prior to implementation. Any such program should have the aim to compliment and help preserve existing rural settlements. Such programs should not have the effect of "redeveloping" the rural settlements out of existence or result in a fundamental change in character. Strict design controls and proper resolution of sewage waste disposal issues, if implemented, must accompany any such program. To implement this program, studies of each historic rural settlement would need to be conducted and adopted. Where the study warrants, minor expansion of the settlement may be allowed. Text amendments would be needed to create the specifics of the TDR aspect of any redevelopment, and the institution of design guidelines and preservation requirements would be needed. The best approach may be the creation of a zone to implement this program.

3. Office, Industry and Research Park Transferred Development Rights Program

The Office, Industry, and Research Park (ORP) land use category, and its corresponding P-2 zoning category were created as a part of the 1988 Comprehensive Planning process. This category is intended to provide for "compatible offices, research facilities and light industrial uses to provide jobs in a high quality, park like setting". Various properties within the Urban Service Area were subsequently designated in the ORP land use category. These include Coldstream Farm, Hamburg Place, a portion of the University of Kentucky's South Farm, and the Kentucky River Coal property on Georgetown Road.

The P-2 zone, created to implement the category, required very high open space levels in order to create the “quality, park-like setting.” Fifty-percent of the land in any P-2 project is required to be open space, and building coverage is generally limited to 30% with a maximum floor area ratio of 0.4. For comparison purposes, the Economic Development (ED) Zone created in the Expansion Area requires 25% open space, and a maximum floor area ratio of 0.5.

An appropriate TDR incentive program would be to allow P-2 developments to purchase TDRs in order to increase floor area ratios and/or reduce the 50% open space requirement. Maximum limits should not exceed those established for the ED zone, thus ensuring a quality development environment. Another incentive program could provide for integrating clustered residential uses into the P-2 project, capitalizing on the abundance of parking and open space required within the project. In concept, these approaches merely transfer the open space required in the P-2 project from on-site to the Rural Service Area. These programs should be coupled with related exceptions to setbacks, minimum lot sizes, and other requirements of the P-2 zone.

4. Incentive Program to Intensify Existing Commercial Areas

This TDR based program would allow a reduction in the required off street parking or a reduction in a similar restriction depending on the zoning category. Such a program could virtually have the effect of “creating” new commercial land area in the sense that additional building development and new businesses would result. A program of this nature would have benefits, and some potential concerns:

Benefits:

- High economic value
- Useable locations over the entire community
- Not creating new retail locations which may create problems for surrounding owners. It would only increase the use of existing centers.
- May improve the potential for revitalization of abandoned or underutilized commercial sites

Concerns to be Addressed:

- An acceptable level of off-street parking would need to be maintained
- The potential exists for the over-utilization of the site

These concerns can readily be addressed by establishing limitations to any permitted reduction in parking and/or increase in floor area ratio. Further, most parking lots in retail areas are underutilized for all but a very few shopping days around the holiday season. Appropriate reductions in off-street parking should not create a serious problem, particularly when the benefits of preserved rural land are taken into account. Further study would, of course, be needed.

5. Incentive Program to Intensify Existing Residential Development in Conjunction with Transferred Development Rights

Further investigation of this concept is needed. There is the possibility of utilizing a TDR program to possibly allow guest quarters, “granny flats”, or similar accessory residential units in selected existing developed neighborhoods. Such programs should be investigated and implemented if they can be accomplished without negatively impacting the existing neighborhoods.

6. Use of Expansion Area DTRs in Conjunction with Rural Service Area Transferred Development Rights

There are two programs related to the Urban Service Area Expansion Area that can be used for rural preservation programs. First, the \$1,000 per acre open space mitigation fee required as part of the development exaction program in the Expansion Area was created to acquire nearby open space to mitigate the loss of rural land to development. When revenues begin to accrue from this program, they can be targeted to sites near the Expansion Areas. A second program would be to utilize the DTR program that was established in the Expansion Area to use excess receiver sites for TDRs from outside of the Expansion Areas. The DTR program in the Expansion Areas provided that density rights could be transferred away from designated Scenic Resource Areas, greenways, and environmentally sensitive areas into the EAR-2 and EAR-3 zoning categories. Analysis showed that the number of potential receiver units significantly exceeds the likely maximum number of sending units. There are approximately 3,200 potential receiver units in excess of the potential senders. It appears that these additional receiver sites could be opened up to rural TDRs without impacting previously approved density levels within the Expansion Area. This program must be implemented with two qualifications: 1) the program must be structured to maintain a viable market for use of the DTRs within the Expansion Areas, and 2) no overall density increase in the Expansion Area result from the program.

E. CONSIDERATIONS FOR REVIEW OF RURAL DEVELOPMENT PROPOSALS

When properties are proposed for subdivision or other development in the rural area, a number of issues are raised. This section of the report reviews the prevalent issues that need to be addressed during the review process regardless of the size of the parcels to be created. These are a series of recommended policies to be applied in the review.

Road Related Issues

1. **Existing Road Right-of-Way**—All property owners adjoining rural roads must dedicate property necessary to create 25-30 feet of right-of-way from the centerline of the road, or at least reflect the “existing” right-of-way as dictated by state statute.

Recommendation: No change. The depiction of right-of-way for a rural road is appropriate since rural deeds typically read to the road centerline.

2. **Existing Road Improvements**—In urban development, developers frequently have to improve the right-of-way on their property’s frontage (up to the centerline of the road) by adding left turn lanes, widening of the road, or adding deceleration lanes. Rural subdivisions on the other hand, do not (normally) have to widen roads, build turning lanes or deceleration lanes unless there are special circumstances.

Recommendation: No change. Staff would discourage any widening of rural roads except at dangerous intersections or locations. Widening or other right-of-way improvements generally would remove trees, stone fences and embankments that are major visual elements of the rural landscape. Better signage or “scenic rural road” designations might be installed to put drivers on notice of the need for caution, slower speeds, and possible farm equipment on the road.

3. **Approval of New Access**—New or expanded access points must get approval from the Kentucky Department of Transportation and/or the LFUCG Division of Traffic Engineering. The approved access point(s) must meet criteria for sight distance. This approval may involve clearing of trees or stone fences if sight distance problems are encountered.

Recommendation: Work more closely with the State Department of Transportation and the LFUCG Division of Traffic Engineering to limit or relocate access points on rural roads so that significant trees or stone fences would need to be taken out for sight distance purposes. Where necessary, require redesign of any subdivision to minimize the impact.

4. **Number of Access Points**—The Planning Commission now has the authority to limit the number of access points to a rural subdivision. Previously each new lot along a rural road could have its own access point (as close as 250' apart). This new approach is helping to alleviate the loss of trees and stone fences by limiting new access points. The lower number of new access points on rural roads also creates a safer condition for drivers on the rural roads.

Recommendation: Continue to work with the Planning Commission on limiting the number of access points.



5. **New Road Issues**—New roads to serve rural subdivisions can vastly improve the pattern of rural land division by helping to avoid “piano key” lotting along existing roads. However, the siting of new roads has the potential to disrupt agricultural patterns; impact storm water runoff patterns; disturb trees; and have other similar negative impacts on the land.

Recommendation: The standards for such roads should not be the same as for urban streets. Width and existing grade disturbances should be kept at the minimum. The number of units permitted should be kept so low that concerns over street grades, etc. do not significantly affect safety concerns. Special attention should be paid to the routing of such streets so as to minimize negative impacts upon the environment and existing and potential agricultural use patterns.

Building/Structure Issues

6. **Agricultural Buildings**—Under state law, local governments cannot require permits for agricultural buildings and structures, except to establish setbacks from roads and to keep such structures out of the floodplain.
7. **Other Structures**—Other structures (such as homes) can be fully regulated. Due to the large lot size required, the primary concern in the past regarding siting of homes has been the proximity to an acceptable location for septic tanks. Many developments have restricted the buildable area based upon such concerns. Also, the existing regulations prohibit such activity in floodplains, sinkholes, and geologic hazard areas. Other environmentally sensitive areas can also be required to meet special conditions or, in some cases, be prohibited from development entirely.

Recommendation: More attention should be paid to designating limited buildable areas on rural lots. In addition to waste disposal concerns, a wide range of environmental factors should be considered at the time of plat approval. The need for non-buildable areas designed to protect natural areas, tree areas, steep slopes areas, agricultural patterns, and similar features should be routinely assessed, with non-buildable areas being designated on the plats as appropriate.

Other Comments

8. Current Planning has prepared a checklist to show the issues that should be reviewed in conjunction with proposals for rural subdivisions. A copy is attached as Appendix 5.
9. The ability to apply newly adopted standards to previously approved plans is a complex legal question that depends on many factors. These include but are not limited to:
 - a. Whether the previously approval plan was a preliminary or final subdivision plan
 - b. Whether the approved plan was certified or uncertified
 - c. Whether the developer accrued costs in reliance upon a previously approved plan
 - d. The cost to the developer of the new requirements
 - e. Whether the change involves the Subdivision Regulation or Zoning Ordinance.
For example, would the new regulation affect the lot itself or would effect an existing or proposed structure?

These are complex interacting factors, and can be difficult to answer conclusively. Actions to apply new standards to previous approved developments should only be taken after the Department of Law has reviewed their legality, and potential consequences, to the government. Most of the legal tools needed exist in the current ordinances and regulations. When new ordinances are adopted, they should be evaluated as to their applicability to previously approved developments, and applied only to the extent that the Law Department advises.